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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.8.2018

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ARB.P. 530/2018 & I.A. No.8743/2018

SHEKHAR PAL SHARMA

..... Petitioner

Through: Mr. Mukesh Kumar, Adv. along with
the petitioner-in-person.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mr. Jaswinder Singh, Adv. for Mr.
Somvir Singh, Chief Administrative
Officer), CAT.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed in which, the following substantive prayers have been sought:

- a) *Dismiss the appointment of officers of respondent no.2 (NDMA), namely Shri R.K. Mishra and Shri D.N. Sharma, as Arbitrators for the purpose of independent judicial proceedings;*
- b) *Appoint Presiding Arbitrator to the Arbitral Tribunal of three Arbitrators from the judicial side panel of this Hon'ble Court;*
- c) *Remunerations for each of the three Arbitrators may be fixed by this Hon'ble Court;*
- d) *Direct the respondents to bear entire expenses towards Arbitration proceedings as the dispute relate to employment conditions of a statutory corporation (respondent no. 2);*
- e) *Terms of Arbitral Tribunal including composition, place of sitting, remuneration payment schedule, staff and establishment, etc may be specifically communicated to the petitioner;*

f) *Grant minimum 45 days Notice to the petitioner against limitation period of one year on constitution of Arbitral Tribunal with service of its all terms and conditions, including composition of judicial & administrative members therein, remuneration to each arbitrator, schedule of payment, expenses to be borne by which party, place of sitting, expenses of administrative staff and establishment of the Arbitral Tribunal, mode of communication, etc; and/ or”*

2. It is not disputed that the petitioner had approached this Court on a previous occasion by way of a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as “1996 Act”). This petition was numbered as Arb.P. No.456/2018. The said petition came up for hearing before another Bench on 20.6.2018. On that date, the petitioner appears to have conveyed to the Court that the petition filed by him ought to be treated as a petition filed under Section 9 of the 1996 Act, and that liberty be given to file a fresh petition under Section 11 of the 1996 Act.

2.1 Accordingly, notice was issued in the said petition and the interim order was passed on that very date. For the sake of convenience, order dated 20.6.2018 is set out hereafter:

“Learned counsel for the petitioner submits that the present petition may be considered as one u/s 9 of the Arbitration and Conciliation Act, 1996 giving liberty to the petitioner to file a fresh petition u/s 11 of the Act.

Issue notice. Notice is accepted by Mr. Anil Panwar, CGSC on behalf of respondents. He prays for and is granted on weeks’ time to file reply . Rejoinder, if any, be filed within a period of one week thereafter.

It is the case of the petitioner that the petitioner was appointed

as an MIS Specialist by the respondent No.2 vide its order dated 22.12.2015 in connection with implementation of national Cyclone Risk Management Project (NCRMP). He submits that in terms of the appointment letter/contract, the termination notice cannot be implemented till adjudication by the Arbitral Tribunal. He further submits that the petitioner has already invoked the arbitration agreement between the parties and has nominated his nominee Arbitrator.

In view of the above, there shall be an ad interim stay on the operation of the Impugned Termination notice dated 24.5.2018 issued by respondent No.2 till next date of hearing.”

3. Consequently, Arb.P. No.456/2018, in effect, was converted into a petition under Section 9 of the 1996 Act, though no formal order was passed in that behalf. This petition came up for hearing, once again, on 12.7.2018. On that date, the petition was disposed of as the Court was informed that an Arbitral Tribunal stood constituted. Accordingly, the Court directed that the order dated 20.6.2018 would continue to operate for a further period of 15 days from that date, within which time, the petitioner was required to move an appropriate application under Section 17 of the 1996 Act, if so advised.

3.1 The Court made it clear that if an application in that behalf was moved by the petitioner, the Arbitral Tribunal would consider the same on merits, uninfluenced by any observations made by it in the order dated 20.6.2018.

4. Insofar as the captioned petition is concerned, it came up before me on 26.7.2018, when notice was issued in the petition. On that date, Mr. Jaswinder Singh entered appearance on behalf of the respondents.

4.1 Mr. Singh had sought time to return with instructions with regard to the constitution of the Arbitral Tribunal.

4.2 Having regard to the aforementioned circumstances, the captioned petitioner was renotified to today, that is, 23.08.2018.

4.3 Furthermore, interim order was continued till further orders of this Court.

5. Mr. Singh, has returned with instructions. Learned counsel informs me that the petitioner, in the meanwhile, had also moved the Central Administrative Tribunal, Principal Bench, at New Delhi (hereafter referred to as 'CAT').

5.1 It appears that the petition filed by the petitioner came up before CAT for hearing on 20.8.2018. Curiously, the petitioner had invoked before the CAT not only the provisions of Section 19 of the Administrative Tribunal Act, 1985, but also Section 9 of the 1996 Act.

5.2 Evidently, CAT came to the conclusion that since the petitioner had moved this Court under the 1996 Act, it could not entertain the petition filed before it.

5.3 Furthermore, CAT also observed that the 1996 Act did not confer any jurisdiction on it to entertain an application of a kind, which had been filed by the petitioner.

6. It is not disputed by the counsel for the parties that the Arbitral Tribunal stands constituted; a fact which was noticed, as indicated above, by this Court in its order dated 20.6.2018.

7. Mr. Kumar, who, appears for the petitioner, says that the petitioner is aggrieved by the constitution of the Arbitral Tribunal.

7.1 This objection, though was not taken by Mr. Kumar at the hearing held on 12.07.2018, when Arb.P. No.456/2018 was disposed of.

7.2 I am further informed by Mr. Kumar that the petitioner has filed an application under Section 12 of the 1996 Act. Learned counsel says that the Arbitral Tribunal has not rendered a decision on the said application.

8. Given the aforementioned circumstances, to my mind, since the Arbitral Tribunal has already been constituted, a fresh petition for the same purpose would not lie, in particular, having regard to the fact that there has been no challenge to the order dated 12.7.2018.

9. The captioned petition is, accordingly, disposed of.

10. Needless to say, the arbitral tribunal, so constituted, will rule upon the petitioner's application, if any, preferred under Section 12 of the 1996 Act. Since, the petitioner has not, as yet, filed an application under Section 17 of the 1996 Act, at request of learned counsel for the petitioner, time for this purpose is extended by another week. In case, an application under Section 17 of the 1996 Act is not filed, the protection granted by the Court via its previous orders will stand automatically dissolved.

11. It is made clear that in case the arbitral tribunal rules in favour of the petitioner, insofar as the application under Section 12 of the 1996 Act, is concerned, then requisite steps, as mandated in law, would be taken by the parties to proceed further in the matter.

12. Mr. Singh, on instruction of Mr. Somvir Singh, Chief Administrative Officer, Central Administrative Tribunal, New Delhi, assures the Court that the date of hearing will be fixed by the arbitral tribunal within the next three days.

13. Consequently, pending application shall also stand disposed of in the aforementioned terms.

14. *Dasti* under the signature of the Court Master.

RAJIV SHAKDHER, J

AUGUST 23, 2018/pmc